

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS



STATEMENT OF
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ASSISTANT TO THE GENERAL PRESIDENT

ON
REAUTHORIZATION OF THE F.I.R.E. ACT

BEFORE THE
HOUSE COMMITTEE ON SCIENCE

MAY 12, 2004

Mr. Chairman. My name is Kevin O'Connor, and I serve as Assistant to the General President of the International Association of Fire Fighters. Before joining the IAFF staff, I spent over 15 years working as a fire fighter in Baltimore County, Maryland, both as a volunteer and paid professional. I had the opportunity to serve as President of the Baltimore County Professional Fire Fighters Association and the Professional Fire Fighters of Maryland.

I appear before you today on behalf of General President Harold A. Schaitberger, and the 263,000 men and women of the IAFF. The IAFF is by far the largest fire service organization in the nation, and our members protect over 80% of the United States population.

I appreciate this opportunity to share our views on reauthorizing the Assistance to Firefighters Grant program, more commonly known as the FIRE Act. The FIRE Act was a true landmark in the history of the fire service. Prior to its passage, the federal government had never fully acknowledged a responsibility to help protect the health and safety of its citizens from fires and other emergencies. With this initiative, the federal government for the first time became a partner with localities and with America's fire service.

The program has been a model of efficiency. By sending funding directly to local fire departments using a peer review process, the FIRE Act has distributed over \$1 billion in just three years. There have been more than 15,000 grants awarded to fire departments across the nation. These grants have purchased equipment, provided desperately needed training, enhanced fire fighter wellness, and educated children and others about fire safety. Americans are safer today as a result of this program.

But improvements are clearly needed. When the program was first developed, there was a fear that smaller communities and volunteer fire departments would not be able to compete with large municipalities for grants. As a result, several provisions were added to the legislation to ensure that small jurisdictions received a fair share of the funding. The IAFF fully endorsed these provisions, and worked with the National Volunteer Fire Counsel to address issues of fairness.

Based on the experience of the last four years, we now know that those initial fears were unwarranted, and the protections added to the legislation have had a detrimental impact on larger municipalities. Fire departments that are composed entirely of professional fire fighters protect roughly half of the US population, yet last year they received only 17% of the funding.

Together with the other national fire service organizations, we have put together a proposal to begin to address some of these inequities. We are grateful to you, Mr. Chairman, for including some of the recommendations in your legislation reauthorizing the FIRE Act.

With the improvements to the program contained in HR 4107, we had hoped to be able to come here today to endorse the legislation. Sadly, we cannot. The inclusion of an ill-conceived anti-labor provision in the legislation has forced us to oppose the bill as currently written. We hope that this language will be removed in due course or an amendment added which provides similar restrictions on jurisdictions that do not provide bargaining rights for fire fighters and EMS workers. Resolving this one issue will enable us to fully embrace your legislation reauthorizing the FIRE Act.

Before addressing the provision that is the source of our objections, allow me to offer some comments about several other provisions in the legislation.

Size of Grants

One of the most important provisions designed to protect smaller jurisdictions in the original law was a cap placed on the size of grants. By limiting the size of any single grant to \$750,000, the authors hoped to increase the number of grants that would be awarded. Many smaller grants were viewed as better than a few larger ones.

There were two flaws in this reasoning. The first is simply the notion that the same cap should apply to all jurisdictions regardless of size. Larger fire departments require more funds, and the cap proved to be a disincentive for major cities to participate in the program.

The second flaw is that the cap fails to consider the different organizational structures of volunteer fire departments and professional fire departments. Volunteer departments are often comprised of a single fire station, while professional departments are more likely to have multiple stations. As a result of these different systems, the FIRE Act has a built-in bias favoring volunteer fire companies.

Consider, for example, my jurisdiction of Baltimore County. The county operates a combination fire service. There are 33 volunteer fire companies. While independent, they still fall under the command of the Baltimore County Fire Chief. The career service consists of 25 stations. In terms of response, the career service provides the bulk the service. Last year, the 33 volunteer companies responded to 48,159 fire and EMS calls, while the 25 career stations responded to 128,610 fire and EMS calls. Yet, under current law, the career side of the Baltimore County Fire Department is eligible to receive a single grant of \$750,000, while the volunteer sector in Baltimore is eligible to receive grants totaling more than \$24 million.

Clearly, the cap on the size of grants must be raised and linked to population served. We are appreciative of the language in HR 4107, which addresses this need by creating three levels of grants linked to population, with the largest cities eligible for up to \$3 million.

Although we believe this is a step in the right direction, we feel obliged to note that it is just a step. The fire departments in America's largest cities protect millions of people, while some smaller fire departments number their constituencies in the hundreds.

Allowing the largest areas to apply for only 3 times more funding in the face of such vast disparities in need is a problem we believe will need further attention in the years ahead.

Local Match

Another provision of the law intended to protect smaller jurisdictions is a lower local match for communities of less than 50,000 people. Currently, larger jurisdictions must match 30% of the federal funds, while smaller communities need only a 10% match. The 30% match has proven to be problematic for many communities. For example:

In Austin, Texas, the City Manager told the local fire fighters union that he will never apply for a FIRE grant because he views the 30% match as excessive.

In Philadelphia, Pennsylvania, the city was forced to decline a FIRE grant it had already been awarded because it could not come up with the matching requirement.

In Cincinnati, Ohio, the city was only able to afford the 30% match for a flashover simulator it had requested by reducing funding for other fire service needs. As a result, the city has been unable to afford to use the simulator in training exercises. Tragically, a Cincinnati fire fighter lost his life in flashover while this technology sat idle in a nearby warehouse.

In Bethlehem, Pennsylvania, the City Council was poised to vote unanimously to decline a FIRE grant it had been awarded because it could not afford the 30% match. At the urging of the local fire fighter union, the Council agreed to postpone the vote to give the fire fighters a chance to find an alternative. Ultimately, the fire fighters were able to convince City Council to float a bond to pay the matching requirement. It was the second consecutive year a special bond was necessary to receive FIRE Act funding.

HR 4107 begins to address this problem by reducing the local match for larger areas from 30% to 20%. While we thank you and applaud this step, we encourage a further reduction to create parity and place all fire departments on a level playing field.

The rationale given for the lower match for smaller communities is that smaller communities have fewer resources. While that may be generally true, smaller communities also have fewer emergency response needs, and therefore apply for smaller grants. We are aware of no evidence that shows that smaller communities have fewer resources on a percentage basis when compared to larger areas.

Moreover, the notion that smaller means poorer is simply not true in many cases. There are affluent rural areas and very poor urban ones.

We are even aware of some volunteer fire departments that have more financial resources than urban professional fire departments. While they are likely the exception, some volunteer fire companies have proven extraordinarily adept at fundraising. Conversely, elected officials in some larger municipalities are either unable or unwilling to provide

additional resources to fire departments due to severe budget shortages and demands for increased spending on a variety of other public needs.

Significantly, we have been unable to identify any other federal grant program that has different matches based on population. Such a rigid formula has been deemed inapt for federal assistance in other areas, and we urge that the FIRE Act similarly adopt the generally used practice of a single rate. If different matches are warranted, we urge that the distinction be based on more relevant criteria than population.

Coordination of Grants in Combination Departments

One of the challenges facing combination fire departments that incorporate independent volunteer fire companies is assuring that the different components coordinate their efforts and resources. While these issues ultimately need to be resolved at the local level, the lack of coordination has implications for FIRE grants.

In many communities with combination departments, the overarching career department and the independent volunteer departments fail to share information about their FIRE grant applications. As a result, neighboring communities find themselves competing rather than cooperating for equipment and training to meet local needs.

To help remedy this situation, we believe that grant requests that emanate from any department that is part of a broader fire department command structure should be required to coordinate their grant request through the broader authority. This would enable the Chief of a department like Baltimore County to ensure that volunteer companies within the county are not requesting funds for something the county can better provide.

Expansion of the FIRE Act to EMS Providers

Like the other fire service groups, we have reservations about the provision of HR 4107 that expands the FIRE Act to agencies other than fire departments. While we understand and appreciate the argument to include EMS providers in jurisdictions where fire departments do not provide EMS, we are concerned that expanding the program to non-fire departments will open the door for other public safety agencies, such as police departments and private sector response organizations.

And while we agree that EMS should be a major focus of the FIRE Act, we wish to note that the majority of emergency medical services in our nation are provided by fire departments. The FIRE Act already funds and enhances pre-hospital patient care.

If you choose to retain this language in the bill, the one amendment we urge you to consider is to remove the limitation that only volunteer EMS providers are eligible. While not many in number, there are public, professional, single role EMS agencies, and there simply is no reason to deny them access to this funding solely because they choose to hire and pay professional paramedics rather than ask people to work for free.

Administering Agency

One area where we have a slight difference of opinion from some of our allies in the fire service is the issue of which agency should administer the program. But let me be clear: we agree that the U.S. Fire Administration has done an extraordinary job of running this program, and we have no objections to returning the program to USFA.

The only area of disagreement is whether USFA is the only agency that can effectively and efficiently administer the program. We believe the model and procedures developed by USFA can be replicated, and we have received repeated assurances from Secretary Tom Ridge, ODP Director Suzanne Mencer and others that whatever agency runs the FIRE Act will do so in the same manner as USFA. We have no reason to doubt their word.

The criticisms of ODP are that they lack experience with providing funding directly to fire departments and that their emphasis on terrorism preparedness is ill-suited to the FIRE Act. These beliefs stem from ODP's traditional role, but we believe the agency is capable of broadening its mandate.

In many ways, we find this debate somewhat ironic because when we first began lobbying in support of creating the FIRE Act one of the objections leveled at the legislation was the USFA had no experience in providing grants, and that the agency's history suggested it was ill-prepared to take on a program of this magnitude. Like the concerns expressed about ODP, these criticisms of USFA were legitimate. But we responded that we had faith that USFA would rise to the challenge, and we are pleased to report that it has done so spectacularly. We similarly have faith in ODP's commitment and abilities.

From the IAFF's perspective, how well the program is run and what the funding is used for are more important than which agency administers it.

Non-Discrimination Against Volunteer Fire Fighters

The reservations we have regarding the foregoing issues, however, would not prevent us from endorsing an otherwise positive piece of legislation. Our reluctant opposition to HR 4107 is based entirely on the inclusion of an ill-conceived extraneous provision referred to as "Protection of Volunteers from Discrimination."

This provision would bar a fire department from receiving FIRE Act funding if it contains in its collective bargaining agreement a clause prohibiting its fire fighters from serving as volunteer fire fighters in another jurisdiction. While a perhaps well-intentioned effort to increase the number of volunteer fire fighters, the actual impact of this proposal would be detrimental and far-reaching. As currently crafted, it is nothing less than an assault on the rights of the nation's professional fire fighters, and the process by which bargaining rights have been won for thousands of fire fighters.

I would like to begin my discussion of this issue by offering some background. First, it is important to note that very few fire departments in the nation, perhaps less than 10, have such clauses in their contracts. Most of them have been in place for several years, and have never been a source of any controversy.

Why would a fire department have such a clause in their bargaining agreements? While the issues may vary from place to place, I believe the most typical answer can be found in the agreement between the City of West Allis, Wisconsin and the fire fighters union in the city. The West Allis example is especially helpful to understand this issue because the contract language includes a clear explanation of the provision's intent. Allow me to quote from it:

“For the reasons stated below the Chief of the West Allis Fire Department shall prohibit employees of the West Allis Fire Department from performing fire fighting duties for municipalities operating a paid or volunteer fire department other than the City of West Allis.

- 1. The provision of fire protection services to the public is a dangerous occupation requiring highly trained, capable personnel using appropriate methods and equipment under the direction of experienced supervisors. As such, the performance of fire protection duties without the requisite training, methods, equipment or supervision may threaten the health and well being of employees and the public.***
- 2. Employees who perform fire protection duties on a voluntary basis or as the result of outside employment are subject to increased exposure to hazardous conditions that may result in a greater incidence of illness or injury. Consequently, the performance of such duties for other municipalities may have a direct bearing on employee's ability to perform fire protection duties for the City of West Allis.***
- 3. State statute has established a presumptive relationship between an employee's fire suppression duties and heart and lung disability the employee may develop. The City of West Allis and its taxpayers are financially liable for the employee's duty disability benefits, and must be confident that such disabilities are the result of the employee's work for the City of West Allis and not for other municipalities.”***

In short, the City of West Allis has chosen to bar its fire fighters from serving as fire fighters in other jurisdictions—either on a paid or volunteer basis—to protect the health and safety of the fire fighters and protect the city's taxpayers against unnecessary financial liabilities. For similar reasons, the City of West Allis also prohibits fire fighters from smoking off duty.

While I am not entirely clear why the city's desire to protect its fire fighters and taxpayers is so objectionable, from our perspective whether such a prohibition is good public policy or not is beside the point. There are much broader issues at stake, and we ask that you carefully evaluate the serious implications of the language contained in HR 4107 before moving forward on this issue.

First and foremost, placing a restriction on issues contained in collective bargaining agreements must be viewed as part of the larger issue of collective bargaining rights. As you know, Mr. Chairman, the federal government does not grant fire fighters in our nation the right to bargain collectively. Where bargaining does occur, it exists because fire fighters have won the right at the state or local level.

For nearly ten years, legislation has been pending before Congress to rectify this inequity and grant every fire fighter in the nation the right to discuss workplace issues with their employer. We are grateful, Mr. Chairman, for your strong support of this legislation. Unfortunately, despite support from clear majorities in both the House and Senate, congressional leaders have blocked action on the legislation.

So the provision in HR 4107 contains something of a cruel paradox. On the one hand, the current position of the federal government is that it is outside the reach of federal authority to grant fire fighters bargaining rights; while on the other hand, this legislation would have the federal government restrict what we can bargain over in those places where we have won the right.

We have to ask: is fire fighter bargaining a federal issue or not? The double standard inherent in restricting bargaining issues without also granting bargaining rights is egregious and unsupportable.

But this is not the sole reason why the provision of HR 4107 needs to be removed before the legislation can go forward. The language also sets two very dangerous precedents.

First, the language would mark the first time Congress has attempted to impose a restriction on fire department policies in order to be eligible for a FIRE grant. Currently, the only requirement is that a department has a legitimate need. Once we begin the process of placing restrictions on how fire departments choose to manage themselves, we are leading down a very thorny path.

I do not mean to imply that the federal government has no legitimate interest in fire department policies. Indeed, there are many, many fire department policies that we believe may warrant federal intervention. Our question, however, is whether the FIRE Act is the appropriate venue to address these issues.

For example, many fire departments fail to comply with OSHA standards for safe fireground operation. This failure clearly jeopardizes the lives of fire fighters, and we believe every department should come into compliance with these basic safety standards. Many fire stations have bars that serve alcohol to fire fighters and others. We believe

alcohol should never be present in a working fire station. And, as noted above, hundreds of fire departments in this nation refused to grant rank and file fire fighters the opportunity to discuss with management their concerns about their own health and safety.

We believe all of these issues are as important, if not more so, than whether a small handful of fire departments have clauses barring people from volunteering in other jurisdictions. We have not, however, previously advocated using the FIRE Act to address these important matters because the program was never intended to compel changes in local Fire Department policies.

Singling out this one restriction for inclusion in the FIRE Act breaches a wall of separation, and invites federal micromanaging of fire departments. Does this extraneous issue truly warrant a radical redefinition of the FIRE Act's purpose?

The final area of concern is that the language establishes yet another precedent with implications far beyond the reach of the FIRE Act or, in our view, even this committee's jurisdiction. Since this issue arose, we have been researching other federal grant programs, and we have yet to find a single instance in which a limitation was imposed on a federal grant based on language contained in collective bargaining agreements. While there are numerous limitations placed on federal grants, we are not aware of any other attempts to redefine the scope of bargaining.

The potential implications for this precedent are staggering. Shall Congress address the complex issue of health insurance coverage by denying federal funds to employers whose health benefits are deemed inadequate? Shall we compel more teacher involvement in student activities by cutting off education funding because a teacher contract limits the number of evening events teachers can be required to attend without additional compensation?

The issue of how to define the scope of permissible bargaining is extraordinarily controversial, and the debate has raged for decades. The notion of removing that debate from the context of labor law and addressing it through grant limitations is a breathtaking reach. I can only conclude that the sponsors of the provision failed to fully comprehend the magnitude and unprecedented nature of the language.

I hope you agree, Mr. Chairman, that this issue is far more complex than merely protecting the rights of people to volunteer. It is for these reasons, that when the national fire service organizations met to discuss a draft version of your proposal, we unanimously agreed to request that the provision be stricken. Even the National Volunteer Fire Council joined in expressing opposition to the proposal.

We are, of course, aware that NVFC has changed its position and now supports maintaining the language. Let me stress that I do not raise this point to criticize NVFC for changing their position. The internal dynamics of organizations are often such that we can oppose something in draft form, but once a bill is introduced we are compelled to take a different stand. I would have done the same if the language were something

benefiting my members. But that does not detract from the fact that NVFC, along with the rest of the fire service, opposed inclusion of the language.

Allow me to make one final point on this issue before concluding my remarks. There apparently has been some confusion regarding the similarity between the language in HR 4107 and the language contained in the SAFER Act authored by you, Mr. Chairman, and passed by Congress last year. It has been incorrectly claimed that the language contained in HR 4107 is virtually identical to language we agreed to in SAFER.

In fact, the language in HR 4107 is much broader than the language in SAFER. The SAFER provision protecting volunteer fire fighters against discrimination does not affect collective bargaining agreements or fire department policies. The restriction is attached solely to the individual fire fighter hired with federal funds.

The language in SAFER is a restriction on the *use* of federal funds. The language in HR 4107 is a restriction on the *recipient* of federal funds. These two concepts are so divergent as to preclude legitimate comparisons. It is fallacious for anyone to suggest the language of HR 4107 is the same language contained in SAFER.

Mr. Chairman, for all the foregoing reasons, I respectfully request that the so-called non-discrimination provision of HR 4107 be removed before moving forward with this legislation. The FIRE Act has had a history of support that has united not only the fire service, but Members of Congress of both parties. We are optimistic that with the removal of this provision, we can return to this spirit of harmony and unity, which has been a hallmark of this important program.

I thank you for your consideration, and would be happy to answer any questions you may have.

Biographical Information
Kevin B. O'Connor

Kevin O'Connor currently serves as Assistant to the General President of the International Association of Fire Fighters, a labor union representing over 260,000 members across the United States and Canada.

In his capacity, Mr. O'Connor supervises the IAFF's Governmental Affairs and Public Policy Division, which consists of three constituent departments: Legislative Affairs, Public Relations and Political Affairs. The Legislative Affairs Department develops policy objectives for the International and engages in lobbying efforts before Congress and various regulatory agencies. Political Affairs constructs an overall strategy to evaluate, endorse and assist candidates favorable to the IAFF in federal, state and local elections. The Department also oversees FIREPAC, a federally registered Political Action Committee, which contributed over seven million dollars through a combination of hard and soft money in the last election cycle. The Public Relations Department serves a dual role. The primary responsibility of the department is publishing the International Fire Fighter, a bi-monthly magazine with a distribution of 270,000 copies, and the IAFF Leader, an issues oriented newsletter for the affiliate leadership of the association.

Previously, Mr. O'Connor served concurrently as president of the Maryland State and District of Columbia Professional Fire Fighters and the Baltimore County Fire Fighters Association, Local 1311, with a collective membership of 7,500. Before ascending to president, Kevin served as trustee, legislative agent, vice president and secretary-treasurer. He held the position of vice president and chairman of the Legislative and Economic Development Committees of the Maryland State and District of Columbia AFL-CIO as well as serving as a Director of the Baltimore Port Council. For twelve years, Kevin was a trustee and chair of the two billion dollar Baltimore County Employees Retirement System. He served as chair of the Baltimore County Health Care Review Committee, which determined and negotiated all health and insurance benefits for that jurisdiction's 12,000 employees. Mr. O'Connor was a gubernatorial appointee and commissioner on both the Maryland Economic Development Commission and the Maryland Fire Rescue Education and Training Commission. He also served as a Director of the Baltimore based First Mariner Bank Corporation.

Kevin proudly served for fifteen years as a fire fighter/EMT in the Baltimore County Fire Department, where he saw duty both as a line fire fighter and as aide to the Chief of the Department. He received a commendation for bravery for a rescue during a multiple alarm apartment fire. Mr. O'Connor majored in Political Economy at Washington and Lee University and graduated from the Harvard Trade Union Program.

He was honored by the State of Israel Bonds as Outstanding Labor Leader of 1999. Upon assuming his role at the IAFF, Mr. O'Connor was awarded life membership and the title of president emeritus of the Baltimore County Fire Fighters Association, Local 1311 and the Maryland State and District of Columbia Professional Fire Fighters.